

Serial No.: 10/705,652  
Docket No.: R0042CON  
Amendment Dated August 11, 2005  
Responsive to the Office Action dated May 5, 2005

REMARKS

Prior to the present Office Action, claims 1-15 were pending. Claims 16-36 are added. Therefore, claims 1-36 are presently pending.

The undersigned wishes to thank Examiner Mendoza for a productive telephonic interview on August 10, 2005 during which the differences between the claims and the references of record were discussed.

Please note the attached Powers of Attorney and Rule 3.73 statement.

Applicants gratefully acknowledge allowance of claims 4, 12 and 13, as well as the allowability of claims 8, 10, and 15. Accordingly, new claims 23-26 dependent from claim 4 have been added. Furthermore, claims 8 and 15 and their respective preceding claims have been rewritten into independent form in claims 35 and 36, respectively

Claims 1-3, 5-7, 11, and 14 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,811,546, in view of Fogarty, et al. (USPN 5,979,452). In response, Applicants submit a Terminal Disclaimer to overcome this rejection. Because this is the only rejection of independent claims 5 and 6, these claims are now in condition for allowance. Furthermore, dependent claims 14-15 and 27-34 (New) are also in condition for allowance.

Claims 1-3, 7, 9, and 11 stand rejected under 35 U.S.C. §103(a) as being obvious over Fogarty, et al. (USPN 5,979,452) in view of Chin (USPN 5,873,889). Of these claims, only claim 1 is independent. Claim 1 has been amended as indicated above, and now provides a fluid sealing apparatus including a body having a central bore with an element disposed about one end that is selectively expandable radially outwardly about the body to provide an external tissue seal. A fluid seal disposed on the other end of the body has an aperture aligned with the central bore and an inner dimension resiliently and flexibly disposed to receive an endoscopic instrument in sliding fluid-sealing engagement. The diameter of the central bore of the body is large enough to permit a range of angulation of an endoscopic instrument extending therethrough.

In contrast, Fogarty, et al. discloses a number of relatively elongated trocar and evertng balloon dissector combinations. None of the Fogarty, et al. devices include a body having a

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central bore that has an expandable element at one end providing an external tissue seal and a resilient fluid seal on the other end providing an internal sliding fluid seal, wherein the diameter of the central bore is large enough to permit a range of angulation of an endoscopic instrument extending therethrough. Please see the discussion at column 5, lines 42-47, where the length of the trocar is 10-20 cm and the balloon is 60 cm. Figs. 10-12 illustrate an endoscope/laparoscope 42 advanced through the trocar/balloon combination "to the leading edge or everted distal end of the balloon so that the surgeon can view the body tissue as it is dissected." (Col. 8, lines 1-3) There is no discussion of providing a central bore that permits a range of angulation of the endoscope, instead the disclosure is limited to linearly sliding the endoscope through the devices.

The Examiner refers to the seal 805 shown in Fig. 8A of Chin and states that one of skill in the art would find it obvious to combine with the Fogarty devices. Chin also discloses relatively elongated tissue separation cannulas through which an endoscope passes. Applicants do not find any motivation to combine these devices, and do not believe that their combination renders original claim 1 obvious. They certainly do not render amended claim 1 obvious.

Specifically, the references alone or in combination do not disclose a central bore having a diameter large enough to permit a range of angulation of an endoscope passing in fluid sealing engagement therethrough. Accordingly, Applicants assert that claim 1 is allowable over the cited references. In addition, dependent claims 2-3, 7-11, and 16-22 (New) are also allowable.

In accordance with the above amendments and remarks, Applicants believe that claims 1-36 are allowable over the cited references. If there is any further hindrance to allowance of the present claims, the Examiner is encouraged to contact the undersigned by telephone.

Respectfully submitted,



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